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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,003	12/08/1999	EDWARD HO	169.1327-CIP	7190
5514	7590	03/18/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			DESIRE, GREGORY M	
		ART UNIT	PAPER NUMBER	
		2625	DATE MAILED: 03/18/2004	

15

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/457,003	HO ET AL.	
Examiner	Gregory M. Desire	Art Unit	2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11 September 2003.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 31-69 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 31-66 is/are allowed.

6)  Claim(s) 67-69 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 08 December 1999 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date 14.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Response to Amendment***

The advisory sent 10/17/03 was improper. The paper sent 4/8/03 was a non-final. Therefore the subsequent office action should not have been an advisory action. The examiner provides an office action based on the outstanding amendment filed 9/11/03.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 31-69 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 67-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darrell et al (6,188,777) in view of Cullen et al (5,781,665).

Claims 67-69 are rejected under 35 U.S.C. 102(e) as being anticipated by Darrell et al. (6,188,777).

Regarding method, apparatus and computer medium claims 61, 67 and 69 Darrell et al discloses,

Testing the color of the plurality of pixels (note col. 6 lines 62-66, color segmentation and detection examines color of the plurality of pixels) to determine those pixels having predominantly skin color (classification score wherein skin value is 1 and nonskin 0 and col. 7 line 11-20, region with value 1 is predominantly skin color), the testing utilizing at least one image capture condition provided with the color digital image (note col. 4 line 65- col. 5 line 25 and col. 7 lines 25-35). The input image is obtained from two camera images. The camera conditions are essential feature, since each camera contains different intensity and other values. Darrell uses a census algorithm technique to determine the similarities of images. Once this is determined. Skin color are tested and detected from lookup tables previously computed from input values note col. 7 lines 23-24;

Subjecting only the pixels determined in said testing step having predominantly skin color to further facial feature analysis whereby those pixels not having predominantly skin color are not subjected to said further feature analysis (note col. 7 lines 44-48, skin color of target range is searched, thus restricting color regions outside the range.);

Darrell is silent wherein a threshold is dependent on at least one image capture condition provided with the color digital image. However Cullen discloses threshold being dependent on at least one image capture condition provided with the color digital image (note col. 4 lines 11-21, threshold is a function of background of digital image

which is adjusted based on image capture condition, thus threshold is dependent on image capture condition). Therefore it would have been obvious to one having ordinary skills in the art to include a threshold value dependent on at least one image capture condition in the system of Darrell as evidence by Cullen. Darrell tests an image utilizing threshold values. Cullen in the same field of endeavor uses threshold values dependent on at least one image capture condition as a calibration process of adjusting threshold (note col. 4 lines 21-24).

As to claims 68 and 67

Selecting of threshold from a plurality of thresholds (note fig. 4 lines 11-22, examiner interprets Cullen determining a threshold from many possible values of a background, examiner interprets as selecting a threshold from a plurality of thresholds).

### ***Allowable Subject Matter***

1. Claims 31-66 are allowed.
2. Applicant's arguments see page 12-line 16- page 13 lines 8, filed 9/11/03, with respect to claims 31-66 have been fully considered and are persuasive. The rejection of claims 31-66 has been withdrawn.

### ***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory M. Desire whose telephone number is (703) 308-9586. The examiner can normally be reached on M-F (8:30-6:00) Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (703) 308-5246. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory M. Desire  
Examiner  
Art Unit 2625

G.D.  
March 5, 2004

  
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